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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,531	12/04/2003	E. Vanessa Boone	BOONE-1	7942
7590	10/21/2004		EXAMINER	
E. Vanessa Boone #1138 13701 Colgate Way Silver Spring, MD 20904			SALDANO, LISA M	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/726,531	BOONE, E. VANESSA <i>ST</i>
	Examiner Lisa M. Saldano	Art Unit 3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 December 2003.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 04 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/4/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

*Drawings*

1. The drawings are objected to because, in Figure 1, the dotted lines that are supposed to represent a person's head and hair are not clear or very visible. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

2. Claims 4, 6 and 9 are objected to because of the following informalities:

Regarding claim 4, line 2, the applicant recites limitations directed to “the outer material.” However, prior claim language recites an “outer slip.” Please clarify whether the applicant intends to claim the outer slip material.

Regarding claim 6, line 1, the applicant recites limitations directed to “the compressible material.” It is not clear whether the applicant is claiming limitations directed to the compressible material of the base pillow or the compressible material of the head pillow. Please clarify.

Regarding claim 9, line 3, the applicant recites limitations directed to “the base and more flexible foam adjacent to the person’s head.” First, prior claim language claims a base pillow, not merely a base. Please clarify the claim language to provide proper basis for the limitation of a “base.” Second, the examiner suggests that this phrase be rewritten to claim “a second layer of flexible foam near an uppermost surface of the head pillow, which is adjacent to a person’s head during use of the headrest.” The claim as currently written appears to claim an invention comprising a combination of flexible foam adjacent to a person’s head.

Appropriate correction is required. The prior art examination has been provided, as the invention is best understood.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3, 4 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "relatively" in claims 3, 4 and 9 is a relative term which renders the claim indefinite. The term "relatively" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Please define the basis on which the term "relative" is compared to or clarify the claim to remove indefinite language. The prior art examination has been provided, as the invention is best understood.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Rinz (4,754,513).

Regarding claim 1, Rinz discloses a pillowcase and pillow assembly capable of functioning as a headrest for elevating a person's head to minimize pressure against a person's head comprising a base pillow 17 made of compressible material resting on a support surface (see Fig.5). Rinz further discloses a head pillow 16 made of compressible material mounted on the base pillow through pocket 15 in pillowcase 10. In Fig.1, Rinz illustrates that the assembly comprises a head pillow 16 with a top surface that is substantially less than the top surface of the base pillow. Furthermore, the head pillow is located on the base pillow spaced from at least a portion of the periphery of the base pillow to define a free area on the top surface of the base pillow 17 at an elevation less than that of the head pillow for receiving at least a substantial portion of a person's hair (see Fig.2).

Regarding claim 2, Rinz discloses a pillowcase 10 that functions as a fabric covering positioned over at least the top surfaces of the base pillow 17 and the head pillow 16 (see Fig.2).

Regarding claim 6, Rinz discloses that the head pillow 16 is made from a soft, resilient, elastomeric material such as polyurethane foam or polyester foam (see column 2, lines 25-30).

Regarding claim 7, Rinz discloses that the head pillow 16 is positioned along a portion of the periphery of the base pillow with the remaining peripheral portions of the base pillow being spaced from the head pillow (see Fig.1).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rinz as applied to claim 2 above in further view of Glaze (US2003/0000019A1).

Rinz discloses the pillow and pillowcase assembly as described above.

However, Rinz does not explicitly disclose that the pillow may have an outer removable cover of smooth material.

Glaze discloses a hairstyle pillow comprising a removable cover that may be made of cotton or polyester or a smooth material such as satin (see page 1, paragraph [0011]). Note: Glaze has a priority date of July 1, 2002.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a removable cover of smooth material, as taught by Glaze, over the pillow of Rinz because both pillows are intended to be used for comfort of a neck and head. Furthermore, the silk fabric taught by Glaze is known to provide a surface that increases user comfort by reducing high-friction between the user's body and the pillow. Furthermore, it would be obvious to use a permanent inner cover because the outer cover would be removable for hygiene and cleaning purposes.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rinz as applied to claim 7 above in further view of Austin (5,360,017).

Rinz discloses the pillow and pillowcase assembly as described above.

However, Rinz does not disclose that the top surface of the head pillow 16 is rectangular.

Austin discloses a therapeutic pillow 10 comprising a base pillow 12 with optional height adjustment components 18,20 (see Fig.1). Austin further discloses a neck support component 22 that may function as a head pillow. The support component 22 may have a circular, square or rounded-rectangular configuration (see column 3, lines 1-4). Austin illustrates in Figs.1&2 that the pillow has a rectangular top surface.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify a top surface of the head pillow of Rinz to incorporate the rectangular top surface taught by Austin, because both pillow are therapeutic and function to provide relief for a user as determined by orthopedic therapist or other health care professionals (see column 1, lines 5-10). The use of a rectangular shape as suggested by Austin is a mere change in shape while maintaining the functionality of the pillow assembly.

10. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rinz as applied to claim 1 above in further view of Lilley, Jr. (5,855,415).

Rinz discloses the pillow and pillowcase assembly as described above. Specifically, Rinz discloses that the head pillow 16 is made from a soft, resilient, elastomeric material such as polyurethane foam or polyester foam (see column 2, lines 25-30).

However, Rinz does not disclose that the head pillow 16 is made of varying layers of foam with different stiffnesses.

Lilley, Jr. discloses a cushion that may be used as a headrest comprising layers of foams with varying densities and resilience values (see Fig.1). Lilley, Jr. discloses that combinations of foam layers having either medium-resilience or low-resilience and low-to-medium density can be combined using various methods to provide improvements in comfort, as well as reduction in cushion weight (see column 2, lines 59-66). The varying resilience and densities also results in varying stiffness and flexibility properties.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the head pillow of Rinz to comprise layers of foam with varying properties such as stiffness, as taught by Lilley, Jr. because the varying properties provide improvements in comfort for the person using the cushion, as mentioned by Lilley, Jr. Furthermore, the various material properties provide for possible reduction in weight of the cushion, which allows the user of the pillow to transport the pillow with greater ease.

Regarding claim 10, it would have been obvious to one of ordinary skill in the art at the time of the invention to construct the pillow of Rinz such that both the head pillow and base pillow comprise urethane foam. Rinz specifically discloses the use of urethane foam as material for the head pillow. Rinz also discloses that the base pillow 17 is a conventional pillow. As Rinz

suggests, urethane foam is used in the construction of pillows, so the use of urethane foam for both the base and the head pillows is not precluded by either Rinz or Lilley, Jr's disclosure.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Franzen, Jr. (5,630,239), Franzen (5,482,355) and Bechtold, Jr. (D400,749) disclose features that are pertinent to the present application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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